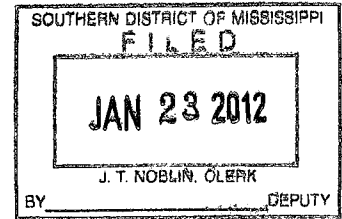


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



ANNIE M. HAYMORE, BY AND THROUGH
MAXINE HAYMORE, AS ATTORNEY-IN-FACT

PLAINTIFFS

v.

CIVIL ACTION NO. 3:12CV48 *cwr-*
FKB

CHADWICK NURSING & REHABILITATION
CENTER; CHADWICK NURSING &
REHABILITATION CENTER, LLC; AURORA
CARES, LLC; AURORA HEALTHCARE, LLC;
CORPORATIONS A-G; JANE DOES A-G;
AND JOHN DOES A-G

DEFENDANTS

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Chadwick Nursing and Rehabilitation Center, LLC;¹ Aurora Cares, LLC; and Aurora Healthcare, LLC (collectively, the "Defendants") file this Notice of Removal of the civil action styled *Annie M. Haymore, by and through Maxine Haymore, as Attorney in Fact*; Civil Action No. 251-12-24-CIV, from the Circuit Court of Hinds County, Mississippi, to the United States District Court for the Southern District of Mississippi, Jackson Division. In support of this Notice, the Defendants state the following:

1. Plaintiff Maxine Haymore filed this medical negligence action on January 10, 2012. The lawsuit arises out of the care and treatment provided to Annie M. Haymore while a

¹ The entity "Chadwick Nursing & Rehabilitation Center" does not exist and has not been served with process.

resident of Chadwick Nursing and Rehabilitation Center, LLC. According to the Complaint, Annie M. Haymore suffered injuries as a result of the Defendants' negligence.

2. In the Complaint, the Plaintiff asserts claims of negligence, medical malpractice, negligent supervision, negligent retention, and gross negligence against the Defendants. The Plaintiff also asserts claims based on respondeat superior and res ipsa loquitur, and she seeks to recover punitive damages from the Defendants.

3. The Defendants were served with a copy of the Complaint and Summons on January 11, 2012. This Notice of Removal is therefore timely pursuant to 28 U.S.C. § 1446(b).

4. Venue is proper in the United States District Court for the Southern District of Mississippi, Jackson Division, because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(a)(3).

5. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon the Defendants are attached as composite Exhibit "A."

6. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between the Plaintiff and the Defendants.

7. It is apparent that the amount in controversy requirement is met because the Notices of Claim served on all of the Defendants pursuant to Mississippi Code Annotated § 15-1-36(15) and attached as Exhibit B to the Complaint state that the Plaintiff seeks to recover \$500,000.00 in damages from the Defendants.

8. Diversity of citizenship exists because the Plaintiff is alleged to be a citizen of Mississippi, and none of the Defendants are citizens of Mississippi. Compl. at ¶ 1. As set forth in

detail below, Chadwick Nursing and Rehabilitation Center, LLC is a Mississippi limited liability company whose members are all citizens of the State of New York. Therefore, Chadwick is not a citizen of Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of an LLC is that of all its members). Likewise, Defendants Aurora Cares, LLC and Aurora Healthcare, LLC are foreign defendants, as their members are citizens of the state of New York and are not citizens of Mississippi.

9. Chadwick Nursing and Rehabilitation Center, LLC's members are D&N, LLC and DTD HC, LLC. D&N, LLC and DTD HC, LLC are New York limited liability companies. D&N, LLC's members are Norbert A Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee).

10. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a resident and citizen of the State of New York. The trustee of The Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

11. Aurora Cares, LLC and Aurora Healthcare, LLC are New York limited companies with their principal place of business in New York. Aurora Cares, LLC's members are D&N, LLC and DTD HC, LLC, and Aurora Healthcare, LLC's members are also D&N, LLC and DTD HC, LLC, all of whose members are identified in paragraphs 9 and 10 above.

12. The Plaintiff has named Corporations A-G; Jane Does A-G; and John Does A-G. For removal purposes, however, the citizenship of a defendant sued under a fictitious name is not

considered. *Doleac ex rel. Doleac v. Michalson*, 264 F.3d 470, 475 (5th Cir. 2001) (quoting 28 U.S.C. § 1441(a) which states, "For purposes of removal, . . . the citizenship of defendants sued under fictitious names shall be disregarded.>").

13. For these reasons, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

14. In accordance with 28 U.S.C. § 1446(d), Hinds County Circuit Court and Plaintiff's counsel have been given written notice of the filing of this Notice of Removal. *See* Exhibit "B."

WHEREFORE, the Defendants request that the above-captioned action now pending in Hinds Count Circuit Court be removed to the United States District Court for the Southern District of Mississippi, Jackson Division, and that the District Court assume jurisdiction over this lawsuit.

THIS the 13rd day of January, 2012.

Respectfully Submitted,

CHADWICK NURSING AND REHABILITATION
CENTER, LLC; AURORA CARES, LLC; AND
AURORA HEALTHCARE, LLC

By their Attorneys,

BAKER, DONELSON, BEARMAN
CALDWELL & BERKOWITZ, PC


CEEJAYE S. PETERS

W. Davis Frye (MB# 10671)
Barry W. Ford (MB# 5403)
Ceejaye S. Peters (MB# 101962)
BAKER, DONELSON, BEARMAN
CALDWELL & BERKOWITZ, PC
4268 I-55 North
Meadowbrook Office Park
Jackson, MS 39211
Phone: (601) 351-2400
Fax: (601) 351-2424

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be delivered by United States Mail, postage prepaid, a true and correct copy of the above and foregoing *Notice of Removal* to the following:

J. Howard Thigpen
Morgan & Morgan
One Jackson Place, Suite 777
188 East Capitol Street
Jackson, MS 39201

THIS the 23rd day of January, 2012.



CEEJAYE S. PETERS